

Bulletin

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British Virgin Islands –

favourite choice for incorporations and the creation of trusts

Anguilla –

a boutique jurisdiction with unique expertise offered by ATU

Authors

Brigitte Gerster

Dr. iur. Christoph Gutmann

ATU General Trust (BVI) Limited,
Road Town, British Virgin Islands

ATU General Trust (BVI) Limited (ATU) is a British Virgin Islands trust company which holds a Class I Trust License, allowing it to offer and provide trusteeship and corporate management services. The company has been successfully operating in this jurisdiction since 1995. It is a subsidiary of Allgemeines Treuunternehmen (ATU), established in 1929 as one of the first trust companies in Liechtenstein. For 80 years, the ATU Group has served the needs of a discerning international client base with a careful and professional approach to financial consultancy. ATU in the BVI draws on this tradition and experience

to offer a range of financial services from the world's most popular corporate jurisdiction, the British Virgin Islands.

In 2004, ATU General Trust (BVI) Limited incorporated its Anguillan subsidiary ATU Corporate Services (Anguilla) Inc. The Company holds a Company Management License under the Company Management Act (c.75) in Anguilla, allowing it to incorporate, domicile and administer International Business Companies in Anguilla.

ATU General Trust (BVI) Limited has been granted the status of an Overseas Agent of ATU Corporate Services (Anguilla) Inc. Hence, the administration for Anguilla-based companies is entirely performed by our experienced administrative service team from within our BVI office.

In the meantime, due to the considerable success of ATU's Anguilla operation, ATU Corporate Services (Anguilla) Inc. has been promoted to a sister company of ATU General Trust (BVI) Limited and now operates under the name of ATU General Trust (Anguilla) Inc., authorized to offer a full range of financial services.



Building of ATU General Trust (BVI) Limited in Road Town, BVI

Establishment and management of enterprises and foundations, use of companies subject to different jurisdictions, trusteeships, family office, advice on legal and tax matters, financial advice, Focus on: British Virgin Islands and Anguilla. Processing of business transactions, advice on investment fund and insurance matters, advice on inheritance and successor arrangements, «A reliable connection – even in times of continuous change», since 1929. Establishment and management of enterprises and foundations, use of companies subject to different jurisdictions, trusteeships, family office, advice on legal and tax matters, financial advice processing of business transactions, advice on investment fund and insurance matters, advice on

1. British Virgin Islands

1.1. Geography

The British Virgin Islands consist of approximately 60 islands, rocks and cays of which around 21 are constantly inhabited, with a few more privately owned. The archipelago is part of the northern Leeward Islands and lies approximately 100 km to the east of Puerto Rico. With the exception of Anegada, a coral atoll, the islands are of volcanic origin. They are mountainous with the highest point on Tortola, the biggest island of the group, being Mount Sage which lies 543 meters above sea level. Road Town on Tortola is the capital.



1.2. Population

At the time of writing the total population was around 23,000 of which most people live on Tortola. The population is made up of Virgin Islanders, so called



Carnival Scene in Road Town

«Belongers», and expatriates from other Caribbean islands as well as expatriate professionals employed in the financial services and tourism industries.

1.3. Language

The official language is English, with a colloquial dialect spoken by Virgin Islanders.

1.4. Religion

The islands are predominantly Protestant Christian, with the largest individual Christian denominations being Methodist (33%), Anglican (17%), and at a lesser percentage Catholic (10%).

1.5. Politics

The British Virgin Islands are a British Overseas Territory, part of the British Commonwealth. A Governor appointed by the Crown holds office in Road Town and a local Premier is appointed by local election at least every four years. There are two political parties, the Virgin Islands Party (VIP) and the National Democratic Party. The former won the elections in August 2007, with The Hon Ralph O'Neil currently serving as the territory's first Premier. Both political parties are benevolent to and appreciate the benefits brought to the economy of the territory by the financial services industry.



House in Road Town

1.6. Economy

The British Virgin Islands is amongst the most prosperous countries in the Caribbean region with an estimated per capita GDP of around US\$ 46,000 (2006).

The territory's economy is almost entirely based on two industries; tourism and the financial services industry. Although tourism is arguably more important given that a lot of tourism related enterprises are locally owned, the financial services industry is economically more important with nearly 50% of the government's income derived directly from license fees for British Virgin Island Business Companies and other licensed structures.

The tourism industry contributes approximately 45% of the territory's income. The islands are known for their beautiful beaches and world-class sailing and are a popular destination for US holiday makers. Many of the islands visitors are cruise ship passengers but these generally enjoy only a few hours on the islands and produce far less income for the territory.

The currency used in the British Virgin Islands is the US Dollar (since 1957).

1.7. Tax Regime

Traditionally, the former International Business Company and the International Limited Partnership were never subject to any income taxes in the British Virgin Islands.

The introduction of the British Virgin Island Business Companies Act, 2004 which came into force on 1 January 2005 abolished income tax for local companies as well. Nowadays, Business Companies incorporated as local businesses and such used for international clients pay a due to the government in the form of a registration fee on incorporation and thereafter in the form of an annual government fee. BVI Trusts are subject to a stamp duty of US\$100 on creation.



Government Building of the British Virgin Islands

Taxes in relation to capital are unknown in the territory.

Perhaps of little importance to the reader but nevertheless interesting, some forms of taxes exist in the British Virgin Islands, namely payroll tax of 8% above US\$10,000.

2. Services offered by ATU in the British Virgin Islands

2.1. The Business Company

Most professionals will be familiar with the huge success the British Virgin Islands enjoyed with the introduction of the International Business Companies Act in 1984 under which approximately 550,000 so called IBCs were incorporated.

With time enhancement and modernization became evident and as mentioned, the British Virgin Islands Business Companies Act, 2004 came into force on 1 January 2005. Since 1 January 2007 all

former IBCs which did not prior to that date re-register voluntarily have automatically been re-registered and are operating under the new act. The introduction of this new corporate legislation proved a phenomenal success with over 70,000 new incorporations in the year 2007 alone.

The British Virgin Islands remain one of the preferred jurisdictions for the incorporation of a company. Advantages for incorporating a BVI company are the jurisdiction's English speaking nature, its stability, long-established and experienced professional workforce. The company registration system (VIRRGIN) is a fast and highly efficient tool used for both incorporations (usually within 24 hours) and post-incorporation transactions.

Confidentiality is guaranteed with the details of directors and shareholders not publicly available information.

Business Companies may be used in conjunction with VISTA Trusts, Share and Purpose Trusts. They may also be used as Special Purpose Vehicles, Private

Trust Companies, to apply for a Restricted Trust License and may be incorporated as Segregated Portfolio Companies.

The issuance of bearer shares is sensibly regulated, whereas bearer shares must be deposited with an authorized custodian. It should be noted, however, that ATU has not opted to obtain the status of such an authorized custodian. Anguillian incorporated International Business Companies are offered as an alternative to our clients. These companies are introduced later in this Bulletin.

2.2. The Standard BVI Trust

Trusts may be created under comprehensive and contemporary trust legislation in force in the British Virgin Islands.

A BVI trust may convey life interests or may be of a discretionary nature. A life interest trust combined with overriding discretionary powers conferred on the trustee is also a possibility. Charitable or non-charitable trusts may also be created.

The maximum perpetuity period applicable to trusts created under the laws of the British Virgin Islands is 100 years.

The fact that the BVI has passed strong anti-forced heirship rules will be of special interest to a client domiciled in a Civil Law jurisdiction.

2.3. The Virgin Islands Special Trust (VISTA Trust)

The introduction of the Virgin Islands Special Trust Act, 2003 («VISTA») brought a solution to a trustee's problems when holding company shares for succession purposes. Traditionally, the old English rule of the «prudent man of business» enforces a trustee to preserve the value of trust assets and in addition, requires a trustee to monitor and intervene in the affairs of an underlying company.

The provisions set out in VISTA conquered the problem, respecting the settlor's wishes and his involvement when a family business is placed in a trust structure, at the same time alleviating some of a trustee's inherent duties. VISTA provides not only a solution but presents a perfect tool for complex succession planning of a client's assets.

2.4. The Share Trust

This is a fairly recent product on the market; very innovative and extremely time and cost efficient.

The Share Trust is exclusively used for succession planning of shares in a British Virgin Islands Business Company. Based on the principles of VISTA, it provides that the trustee's sole duty is to ensure that the shares held in trust are passed on in accordance with the wishes of the settlor on his demise. During the settlor's lifetime, the underlying Business Company is managed under his control and he may even revoke the placement of shares into the Share Trust.

On the settlor's death and the subsequent transfer of the shares in accordance with the trust documents, a Share Trust is terminated.

2.5. A Restricted Class II Trust License for a Business Company

The holder of a Restricted Class II Trust License is allowed to provide trusteeship services to a maximum of 50 trusts. In contrast to the regulations attached to a Private Trust Company, these trusts need not be related trusts and receipt of remuneration is not restricted.

It is not compulsory for a Business Company applying for such a restricted license to appoint resident directors. Alternatively ATU can provide a resident director. The holding of a Restricted Class II Trust License may provide a strong marketing tool for a service provider in another jurisdiction.

2.6. The Private Trust Company («PTC»)

PTCs provide an excellent wealth and succession planning tool and have become more and more popular in their use when planning for wealthy families.

In August 2007, the BVI enacted regulations which permit unlicensed PTCs in the jurisdiction. Incorporations are as fast and efficient as the incorporation of a standard BVI Business Company, with the only stipulations being that the designation «PTC» is contained in the name of the company and that the memorandum of association states the company's purpose as acting as a private trust company.

A BVI PTC may act as trustee of more than one trust as long as a settlor is related to the beneficiaries of the trust. Trusts with a different settlor may be administered by the same PTC as long as these settlors also have a family connection.

Settlors and their families are often reluctant to relinquish control over assets to a trustee in a far away country, a trustee they may well never have met. PTCs allow for a settlor and or family members to be on the board, therefore retaining the desired control over assets put into a trust. Confidentiality is ensured with the details of the directors not being information publicly available.

Care must be taken concerning the shareholding of a PTC in order to ensure that there are no succession problems. Favoured structuring involves a BVI Purpose Trust whose sole purpose is to hold the shares in one or more PTC.

2.7. The International Limited Partnership

1996 saw the introduction of the Partnership Act.

An International Limited Partnership is exempt from any taxes in the BVI but may not carry on business within the jurisdiction, nor with resident persons.

International Limited Partnerships are registered with the Registry of Corporate Affairs and a limited partner may at the same time also be a general partner. The identity of the partners is not information publicly available.



Beach near Road Town

3. Anguilla

3.1. Geography



The main island of Anguilla is a flat island, made of corral and limestone. Its highest point is Crocus Hill at an elevation of 65m. The island covers roughly a mere 90 square kilometers. Apart from the smaller Dog and Scrub Islands, there are more than 20 other, even smaller islands and cays. Anguilla is one of the most northerly Leeward Islands, situated east of Puerto Rico and just north of the French and Dutch owned Saint Martin/ Sint Marten. The Valley on the island of Anguilla is the capital.



Beach on the main island of Anguilla

3.2. Population

The population of Anguilla is made up of approximately 13,000 inhabitants. All inhabitants live on the main island of Anguilla with no permanent population on the other islands and cays.

3.3. Language

The official language is English. Apart from other languages spoken by immigrants, the most common tongue spoken is a Creole language termed «dialect» or «Anguillian».

3.4. Religion

Anguilla's population predominantly follows Protestant Christian beliefs, with the largest denominations being Anglican (29%) and Methodist (24%). Other religions include Seventh Day Adventists, Members of the Church of God, Baptists and 5.7% are Catholic.

3.5. Politics

Anguilla is a British Overseas Territory, part of the British Commonwealth. The

country is governed by an Executive Council of ministers appointed from the Legislative Council of elected members, presided over by a British appointed Governor.

3.6. Economy

Less prosperous than other islands of the Caribbean, Anguilla's estimated GDP per capita amount was approximately US\$ 8,800 in 2004. However, Anguilla's economy is rapidly expanding, especially in the tourism sector with major developments booming.

Other main industries include the financial services industry and fishing. The financial services industry is growing steadily with the introduction of new legislation, introduced to attract business.

The currency used in Anguilla is the East Caribbean Dollar with an exchange rate that is fixed to the US Dollar at EC\$ 2.68 per US\$. The US Dollar itself is widely accepted.

3.7. Tax Regime

Anguilla is truly a neutral tax jurisdiction. There are no income, capital gains, estate, profit or other forms of direct taxation on either individuals or corporations, whether resident in Anguilla or not.

Stamp duty, however, does exist and is regulated in accordance with a Stamp Act.



4. Products offered by ATU in Anguilla

4.1. The International Business Company («IBCs»)

Perhaps not as well known and legendary as the former British Virgin Island IBCs (now Business Companies), they offer a very competitive alternative. The Corporate Ordinance provides the incorporation of IBCs since the mid 1990ies.

Anguilla was the first jurisdiction to realize that a fast and efficient 24 hour online system for incorporations and post-incorporations transactions is imperative to the success of a financial center offering company registry administration. In 1998 ACORN was successfully launched, allowing for new companies to be incorporated very quickly.

The details of the directors and shareholders are not available to the public and confidentiality is therefore guaranteed.

An Anguillan IBC may still opt to issue shares to the bearer, as long as these are held in custody by ATU directly or by a so called Professional Service Client of ATU.

Readers interested in the creation of funds should note that an IBC may take on the form of a Protected Cell Company. It is

generally agreed amongst professionals that Anguilla's law provides for the most effective Protected Cell Company form on the Caribbean market.

4.2. The Foundation

Foundations are well known and understood in Civil Law countries and offer a convenient alternative for clients finding it difficult to understand the Anglo-Saxon concept of trusts.

Anguilla being an Anglo-Saxon jurisdiction enhances the advantages of an Anguilla Foundation. Contrary to Civil Law, Anglo-Saxon Common Law and legislation provides for asset protection and estate planning in general. It should be noted that Anguilla does not recognize forced heirship, but rather has anti-forced heirship laws enacted. In contrast to a trust, the foundation has a legal personality and no perpetuity period, it may last as long as desired.

The Anguillan government, with intense assistance from industry specialist, in particular ATU, drafted and passed the Anguilla Foundation Act, 2008. ATU is able to market this new boutique product as the service provider with specialist knowledge of Anguilla foundations and offers clients easy and swift re-domicilia-

tion of existing foundations as well as the establishment of new ones.

The authors of this article, Brigitte Gerster and Dr. iur. Christoph Gutmann, will be happy to assist you, should you require further information. Please contact them at:

ATU General Trust (BVI) Limited
3076 Sir Francis Drake's Highway
P.O. Box 3463
Road Town, Tortola
British Virgin Islands
T +1 284 494 1100
F +1 284 494 1199
info@atubvi.com
www.atubvi.com



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